



# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,560	01/25/2001	Michael Benjamin Ronci		5145

7590 06/07/2006  
MICHAEL RONCI  
51 PINEHURST CIRCLE  
ORMAND BEACH, FL 32174

EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT PAPER NUMBER

2859

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Interview Summary</b>	<b>Application No.</b> 09/768,560	<b>Applicant(s)</b> RONCI, MICHAEL BENJAMIN	
	<b>Examiner</b> Diego Gutierrez	<b>Art Unit</b> 2859	

All participants (applicant, applicant's representative, PTO personnel):

(1) Diego Gutierrez. (3) \_\_\_\_\_.

(2) Michael Ronci. (4) \_\_\_\_\_.

Date of Interview: 30 May 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 2-8.

Identification of prior art discussed: N/A.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.



**Diego Gutierrez**  
**Supervisory Patent Examiner**  
**Technology Center 2800**

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner.  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

The last response from Mr. Ronci was filed on 5/17/06, which is over 3 months from the mailing date of 2/10/06 of the Final Rejection. It was explained to Mr. Ronci that he needs to request and pay for a 1 month extension of time so that the response filed on 5/17/06 may be considered by Exmr. Verbitsky. The 1 month extension of time will extend the period for response to 6/10/06. It was also explained to Mr. Ronci that during this extended period for response, he could file a Notice of Appeal with the proper fee, which will give him two months to file the Appeal Brief with the appeal brief fee. It was also pointed out to Mr. Ronci that he could request a Pre-Appeal Conference but this request must be filed with the Notice of Appeal. The OG notice of 12 July 2005 explaining the Pre-Appeal Brief Conference program/requirements is attached.

The claims were discussed in general and it was explained to Mr. Ronci that anytime that limitations are added to the claims, the examiner may have to change the rejection since another reference, which shows the new limitations, may be needed to reject the invention.

**United States Patent and Trademark Office OG Notices: 12 July 2005**

## New Pre-Appeal Brief Conference Pilot Program

Effective Date: Effective upon publication of this notice

This new program offers applicants an avenue to request that a panel of examiners formally review the legal and factual basis of the rejections in their application prior to the filing of an appeal brief. Effective immediately, the USPTO is offering applicants an optional procedure to review the examiner's rejection prior to the actual filing of an appeal brief. The program is intended to spare applicants the added time and expense of preparing an appeal brief if a panel review determines an application is not in condition for appeal. Although this procedure will not be appropriate in every appealed application, in the proper situations it can save both the resources of the applicant and the Office. Applicants continue to have available to them the normal practice and procedures already in effect under Part 41 of the Title 37 of the Code of Federal Regulations relating to appeals and practice before the Board of Patent Appeals and Interferences.

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## 1. General Provisions:

## . What is this program?

Under the current practice every applicant whose claims have been twice rejected may appeal the examiner's decision to the Board of Patent Appeals and Interferences. To do so, the applicant first files a notice of appeal accompanied by the appropriate fee i within the appropriate time period ii. Within two months from the date of the filing of the notice of appeal, applicant must file an appeal brief accompanied by the appropriate fee iii. Applicants may buy extensions of time for filing the appeal brief.

This pilot program offers applicants an opportunity to request a review of identified matters on appeal employing an appeal conference currently employed in the Office, but prior to the filing of an appeal brief. The goals of the program are (1) to identify the presence or absence of clearly improper rejections based upon error(s) in facts, or (2) to identify the omission or presence of essential elements required to establish a prima facie rejection.

## . Who can use this program?

Any applicant who has filed a notice of appeal and who wants a panel of experienced examiners to perform a detailed review of appealable issues within a set period of time.

## . How to decide if you should request this panel review?

If the applicant feels the rejections of record are clearly not proper and are without basis, then filing this request may result in a panel decision that eliminates the need to file an appeal brief. This should be based upon a clear legal or factual deficiency in the rejections rather than an interpretation of the claims or prior art teachings. The latter is more appropriate for the traditional appeal process currently employed by applicants.

. What happens during a panel review?

A panel of examiners (including the examiner of record) will consider the merits of each ground of rejection for which appeal has been requested and will issue a written decision as to the status of the application.

. When should you file an appeal brief or other correspondence?

This program is designed to allow applicants who think there is a clear deficiency in the *prima facie* case in support of a rejection to file the request at the same time that they file a notice of appeal. This affords the Office the best opportunity to ensure that applicant will promptly receive a decision on the request. If the request is filed with the notice of appeal, the period of time for filing the appeal brief will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request.

. What actions will terminate the panel's review?

If applicant files any of the following responses after filing a request, but prior to a decision by the appointed panel of examiners assigned to conduct the review, the review process will end and a decision will not be made on the merits of the request:

- an appeal brief
- a request for continued examination (RCE)
- an after-final amendment
- an affidavit or other evidence
- an express abandonment

A request for the declaration of an interference will also result in an end to the review process. Applicant will be promptly notified by an Office communication of termination or of dismissal of the request. If any of the above-noted actions occur, the period for filing the appeal brief (if applicable) will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request.

## 2. Conditions Necessary to Request a Panel Review:

- Applicant must file a notice of appeal in compliance with 37 CFR 41.31.
- Applicant must file the request with the filing of a notice of appeal and before the filing of an appeal brief. 1

## 3. Content of Request:

a. File the request and accompanying arguments in a separate paper entitled, "Pre-Appeal Brief Request for Review". A sample request form has been created and is available on the USPTO Internet Website, on the forms page, as PTO/SB/33.

b. In five (5) or less total pages, provide a succinct, concise and focused set of arguments for which the review is being requested.

c. File the request with the notice of appeal.

d. Address the notice of appeal and the request to

- Mail Stop AF
- Commissioner for Patents
- P.O. Box 1450
- Alexandria, VA 22313-1450
- Fax the notice of appeal and the request to the Central FAX Number (now 571 273-8300)
- Hand carry the notice of appeal and the request to the

USPTO Customer Service Window, ATTN: Mail Stop AF  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

e. No after-final or proposed amendments may accompany the request. iv

A request that fails to comply with the above noted submission requirements may be dismissed.

#### 4. Content of Remarks or Arguments:

The request should specify-

- . clear errors in the examiner's rejections; or
- . the examiner's omissions of one or more essential elements needed for a prima facie rejection.

For example, the request should concisely point out that a limitation is not met by a reference or the examiner failed to show proper motivation for making a modification in an obviousness rejection (35 U.S.C. 103). Applicants are encouraged to refer to arguments already of record rather than repeating them in the request. This may be done by simply referring to a prior submission by paper number and the relevant portions thereof (e.g., see paper number 3 at pages 4 to 6). However, references such as "see the arguments of record" or "see paper number X" are not helpful and will just obfuscate the real issues for review.

The request may not be more than five (5) pages total and the remarks should be drafted with the expectation that for a clear error in fact or other deficiency, a long detailed explanation is not needed. Requests are limited to appealable, not petitionable matters.

Any actual issues lacking factual basis, including interpretations of the prior art teachings or claim scope as contrasted with clear error in facts, are appropriate for the traditional appeal process and submission of the appeal brief. For grounds where a clear issue on proper interpretation exists, applicant is advised to proceed to appeal with the timely filing of the appeal brief. This program is not intended to be, and is not, an alternative for filing an appeal.

#### 5. USPTO Consideration of the Request:

Upon receipt of a properly filed request, a Technology Center Art Unit supervisor will designate a panel of examiners experienced in the field of technology to review the applicant's remarks and the examiner's rejections. The panel will include at least a supervisor and the examiner of record. The applicant will not be permitted to attend the review and no interviews will be granted prior to issuance of the panel's decision.

The panel members will review the rejection(s) identified by applicant in the request. They will also review the application and the appropriate evidence in support of the rejections to the extent necessary. The panel will then decide if an issue for appeal is, in fact, present in the record. The Office should mail a decision within 45 days of receipt of a properly filed request.

#### 6. Format of Panel Decision:

After the review is complete, the Office will mail a decision on the status of the application. The decision will state one of the following:

- . Finding 1: The application remains under appeal because there is at least one actual issue for appeal.
- . Finding 2: Prosecution on the merits is reopened and an appropriate Office communication will follow in due course. In appropriate circumstances, a proposed amendment may accompany the panel's decision proposing changes that, if accepted, may result in an indication of allowability for the contested claim(s).
- . Finding 3: The application is allowed on the existing claims and prosecution remains closed.
- . Finding 4: The request fails to comply with the submission requirements and is dismissed.

The decision will summarize the status of the pending claims (still rejected, withdrawn rejections, objected to or allowable claims).

A decision by a pre-appeal brief conference panel to withdraw the rejections of any or all of the claims on appeal is not a decision by a panel of the Board of Patent Appeals and Interferences, and, as such, would not result in any patent term extension of adjustment under 35 U.S.C. Sec. 154(b) (37 CFR 1.701(a)(3) and 1.702(e)).

The decision will not contain any additional grounds of rejection or any restatement of previously made rejections. Such matters will be addressed, as appropriate, in the Examiner's Answer.

#### 7. Time Periods Before/After a Panel Decision:

- . The request must be filed with the filing of a notice of appeal and before the filing of the appeal brief. No extensions of time are available for filing the request for review.
- . The time period for filing an appeal brief will be reset to be one month from mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable. To the extent that any existing USPTO rule is inconsistent with this pilot program, the rule is waived until regulations directed to pre-appeal brief conferences are promulgated, or the pilot program is ended. For example, if a request for a pre-appeal brief conference is filed with a notice of appeal, the time



period set in 37 CFR 41.37(a)(1) is waived so that an appeal will not stand dismissed if an appeal brief is not filed within two months of the filing date of a notice of appeal, but is filed within one month of the decision on the request.

Applicant's period for filing the appeal brief or other appropriate response ends on the mailing date of a panel decision that indicates all claims are allowed or that prosecution is reopened.

8. Administrative Matters:

- . Applicants should ensure that requests are mailed or faxed with the notice of appeal to ensure timely filing. The request should contain a certificate of mailing or transmission under 37 CFR 1.8 and be listed on any postcard receipt (MPEP 503).
- . No supplemental requests or arguments will be accepted.
- . The notice of appeal fee is not refundable, even in the event of a decision favorable to applicant.
- . A request filed after the date of receipt of the notice of appeal will be dismissed as untimely.
- . This procedure does not affect petitions to invoke supervisory authority under 37 CFR 1.181 because such petitions address procedural matters, not appealable matters.
- . Panel decisions will not be petitionable because a decision to maintain a rejection is subject to appeal.
- . A pre-appeal brief conference panel decision that the application remains under appeal is not final agency action for purposes of court review. An applicant dissatisfied with the result of the appeal conference must pursue the appeal before the Board of Patent Appeals and Interferences.
- . This process does not apply to reexamination proceedings.
- . Following a panel review under this pilot program, the examiner retains the option to reopen prosecution or to allow an application after the filing of an appeal brief. This unlikely situation might arise, for example, where new arguments or evidence are presented in the appeal brief.
- . This pilot program will run for at least six months from its effective date. The Office may extend, terminate, revise or otherwise take appropriate action after evaluating its effectiveness at the end of that period. If the program is to be made permanent, the Office will promulgate the appropriate changes to title 37 of the Code of Federal Regulations.

Please direct inquiries with respect to a pending request for a pre-appeal brief conference to the examiner to whom the patent application is assigned, or the examiner's immediate supervisor. Please direct comments and inquiries on this pilot program to Anton Fetting via email addressed to [anton.fetting@uspto.gov](mailto:anton.fetting@uspto.gov). You may also contact Mr. Fetting at (571) 272-7701.

June 20, 2005

JOSEPH J. ROLLA  
Deputy Commissioner for  
Patent Examination Policy

1 Under this pilot program, the request must be filed with the notice of appeal. The Office is considering, as part of a more permanent implementation of the pre-appeal brief conference program, permitting applicants to file the request within two months (non-extendable) of the receipt of the notice of appeal for a fee (\$130.00), in which case the period for filing an appeal brief would simply be the two-month period set

in 37 CFR 41.37(a) (i.e., the mailing of a decision on the request would not provide any new time period for filing the appeal brief). This procedure would be included to encourage applicants to file the request with the notice of appeal and thereby provide the best opportunity for the Office to provide the decision in a timely manner.

- i Set forth in 37 CFR 41.20(b) (1)
- ii See 37 CFR 1.134
- iii Set forth in 37 CFR 41.20(b) (2)
- iv 37 CFR 41.33(a)

### **Extension of the Pilot Pre-Appeal Brief Conference Program**

In July of 2005, the United States Patent and Trademark Office (USPTO) established a pilot pre-appeal brief conference program that offers a patent applicant an avenue to request a review of the legal and factual basis of the rejections in his or her patent application prior to the filing of an appeal brief. See New Pre-Appeal Brief Conference Pilot Program, 1296 Off. Gaz. Pat. Office 67 (July 12, 2005). The USPTO indicated that the pilot pre-appeal brief conference program would run for at least six months, and that the USPTO would extend, terminate, revise or otherwise take appropriate action after evaluating the effectiveness of the pilot pre-appeal brief conference program. See New Pre-Appeal Brief Conference Pilot Program, 1296 Off. Gaz. Pat. Office at 69. While the USPTO has not yet completed its evaluation of the pilot pre-appeal brief conference program, the initial results of this program appear to be promising. Therefore, the USPTO is extending the pilot pre-appeal brief conference program until further notice.

Please continue to direct inquiries with respect to a pending request for a pre-appeal brief conference to the examiner to whom the patent application is assigned, or the examiner's immediate supervisor. Please direct comments and inquiries on this pilot program to Anton Fetting via email addressed to [anton.fetting@uspto.gov](mailto:anton.fetting@uspto.gov). You may also contact Mr. Fetting at (571) 272-7717.

Date: 1/10/2006

/s/

John Doll  
Commissioner for Patents